

DEPARTMENT OF PERSONNEL & ADMINISTRATION
OFFICE OF THE STATE CONTROLLER
July 2, 2007

NOTICE OF HEARING
Adoption of Fiscal Rules

A public hearing will be held under the authority of Part 2, Title 24, Article 30, CRS, at 9:00 a.m. on **July 30, 2007** in the Colorado Department of Labor and Employment's exam room on the second floor, 633 17th Street, Denver, Colorado, to consider adoption of changes to the State of Colorado Fiscal Rules.

Reasonable accommodation will be provided upon request for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this public hearing, please notify Lea Ann Baker at 303 866-3814 by July 23, 2007.

Summary of Changes to 1 CCR 101-1 – State Fiscal Rules

Chapter 2 Rule 2-2 Commitment Vouchers

Clarifies definition of commitment vouchers. Adds table showing dollar limits and requirements for use of commitment vouchers. Refers to State Controller policy on Situations where Purchase Order is Not Required. Adds definition for statutory violation and refers to State Controller policy on Processing Commitment Vouchers that Violate State Statutes. Refers to State Controller policy on Vendor Agreements.

Chapter 3 Rule 3-1 State Contracts

Defines State contracts as including expenditure contracts, revenue contracts, sponsored projects contracts, and interagency contracts. Further defines each of these types of contracts. Clarifies the form and content for State contracts, and defines acceptable contract forms. Revises review and approval of state contracts consistent with the contracts improvement process. Revises approval of waiver of collocation clause to State Controller. Revises Special Provisions to be consistent with HB 07-1073. Refers to State Controller policies and Review and Approval of State Contracts, Use of Model Contracts, and Sponsored Projects.

Chapter 5 Rule 5-1 Travel

Eliminates requirement for meal receipt. Adds per diem for meals as the basis for reimbursement. Adds prepayment of travel expenses. Updates per diem rates for meals and incidental expenses.

Copies of the text of the proposed rule changes are available for inspection at the Office of the State Controller, 633 17th Street, Suite #1500, Denver, Colorado, 80202, during normal business hours. The proposed changes to the fiscal rules are also available on the State Controller's website, <http://www.colorado.gov/DPA/DFP/SCO> under "Proposed Rule Changes".

A markup of changes to the proposed rules is as follows:

Chapter 2 Rule 2-2 Commitment Vouchers

Rule 2-2 COMMITMENT VOUCHERS

1. AUTHORITY:

24-30-202 (1) and (3), C.R.S. (~~State~~Controller Authority)
24-30-1401 C.R.S. (Professional Services)

2. DEFINITIONS:

~~Advance Payment—A payment that is made prior to the receipt of goods or services.~~

2.1 Commitment Voucher - A document, approved by the State Controller, evidencing:

2.1.1 A description of goods or services being purchased or other reasons for the disbursement;

2.1.2 The amount to be paid;

2.1.3 That an obligation of the State is being charged to the appropriate account; and

2.1.4 That procurement requirements have been satisfied.

~~C-ommitment vouchers include an approved: ppurchase order, a-state~~State contract, ~~an-approved~~travel authorization, ~~an~~-advice of employment, ~~_or any other document appropriate to the transaction~~

Issued by the ~~State~~Controller's Office
Rule 2-2

Date Issued: 7/1/74
Date Revised: ~~8/1/05~~6/13/07

~~prescribed by the State Controller, which provides support that an obligation of the state is being charged to the appropriate account and purchasing requirements have been satisfied. Commitment vouchers also include by way of illustration: grant contracts, license agreements, parking license agreements, invoice, billing, receipt, court order, other written authorization for disbursement that describes goods or services being purchased or other reasons for the disbursement and the amount to be paid, or any other approved document appropriate to the transaction prescribed by the State Controller.~~

~~and any other contract involving the payment of state funds.~~

~~Vendor Agreement - A form provided by a vendor containing contractual terms and conditions relating to the goods and/or services to be provided.~~

2.2 Encumbrance - An amount reserved on the ~~state~~State financial system or an approved ~~state~~State agency or institution of higher education accounting system to meet a formal obligation of the ~~state~~State, which ~~should~~ precedes the recording of the expenditure and the actual disbursement of funds.

2.3 Purchase Order - A document prepared and signed by an authorized employee of a State agency or institution of higher education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this fiscal rule, a purchase order is not considered a state contract.

3. RULE:

3.1 No disbursement of funds shall be made by any ~~state~~State agency or institution of higher education unless it is supported by a commitment voucher. Agencies and institutions of higher education are responsible for ensuring that:

3.1.1 Proposed expenditure is authorized by the appropriation and required approvals have been received;

3.1.2 Prices or rates are fair and reasonable;

3.1.3 Amount of the expenditure is within the unencumbered balance;

3.1.4 ~~C~~commitment vouchers adequately defines the requirements and respective performance obligations and pricing; ~~prices or rates are fair and reasonable;~~

3.1.5 ~~T~~terms and conditions represent a commercially reasonable allocation of risks between the parties; ~~;~~

3.1.6 ~~C~~the commitment voucher complies with applicable statutes, executive orders, rules and policies; approvals have been received; ~~;~~

3.1.7 ~~If the commitment voucher, if is a purchase order or contract, is encumbered. the commitment voucher shall be encumbered. Encumbrance is not required for interagency aAgreements between stateState agencies and institutions of higher education that are charged to a special line item appropriation dedicated to that commitment, routine internal services, and other items specified in the State Controller's policy on Situations Where Purchase Order is Not Required. need not be encumbered.~~

~~The following commitment vouchers are provided for by statute and shall be used as support for the indicated disbursements: A state contract shall be used as defined below. Purchase orders shall be used as defined below. Advices of employment are to be used to pay the salaries of state employees. Travel authorizations and travel expense reports are to be used for any travel, lodging, or meal expenses incurred by state employees while traveling.~~

~~All purchase orders and contracts required to be written in accordance with this Fiscal Rule 2-2 shall be encumbered. Agreements between state agencies and institutions of higher education that are charged to a special line item appropriation dedicated to that commitment need not be encumbered.~~

4. DOLLAR LIMITS AND REQUIREMENTS

4.1 Dollar Limit Requirements

Goods:

- | | |
|---------------------|---|
| • \$5,000 and below | <u>Any commitment voucher</u> |
| • Above \$5,000 | <u>Purchase Order or State Contract</u> |

Services:

- | | |
|------------------------|---|
| • \$5,000 and below | <u>Any commitment voucher</u> |
| • \$5,000 to \$100,000 | <u>Purchase Order or State Contract</u> |
| • Above \$100,000 | <u>State Contract</u> |

Capital Construction/Controlled Maintenance

- See Fiscal Rule 4-1

Professional Services

- State contract required for architectural services, engineering services, land surveying, industrial hygienist services, and landscape architectural services.

Leasing and License of Real Property

- State contract required for leasing of or license for use of land, buildings, or other space when term is more than 30 days.

4.2 State contracts may be appropriate in situations other than those described above, when other commitment vouchers are not sufficient to adequately protect the interests of the State. Questions as to the proper form of commitment voucher should be referred to the Office of the State Controller or the Attorney General's Office.

4.3 Purchase orders and contracts are not required for certain situations, such as payroll related disbursements. See complete list of these situations in the State Controller's policy on Situations Where Purchase Order is Not Required.

5. STATE PURCHASE ORDERS

5.1 A State agency or institution of higher education shall use the standard terms of the purchase order included in the appendix to this fiscal rule.

5.2 Changes to the standard terms of the purchase order must be approved by a procurement officer or delegate in fully delegated agencies or by the State Purchasing Office for partially delegated agencies or by the State Controller, except that:

5.2.1 No changes to the provisions governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, or Funds Availability may be made without State Controller approval.

5.2.2 No changes to the Indemnification, Choice of Law, and Non-discrimination provisions may be made without legal review and written approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.

5.3 A State agency or institution of higher education issuing a purchase order to another State agency or institution of higher education may change or delete any of the standard terms of the purchase order included in Appendix A to this fiscal rule.

6. STATE CONTRACTS

State Contracts shall comply with the requirements of this fiscal rule and Fiscal Rule 3-1.

7. STATUTORY VIOLATIONS

7.1 Statutory Violation – Occurs when a liability is incurred by the State or a payment is made without a purchase order or a State contract when one is required as described below.

7.2 Ratification - The State Controller may ratify the expenditure provided that:

7.2.1 The prices or rates are fair and reasonable;

7.2.2 The amount of the expenditure is within the unencumbered balance;

7.2.3 The State agency or institution of higher education provides a written explanation in accordance with the State Controller policy on statutory violations. See State Controller policy on Processing Commitment Vouchers that Violate State Statutes for further details;

7.2.4 The parties did not act in bad faith or in a fraudulent manner.

7.3 Agencies and institutions of higher education shall not release vendor payments prior to ratification by the State Controller. Any statutory violation not ratified by the State Controller shall be the personal obligation of the person who incurred the obligation.

7.4 All state agencies and institutions are required to maintain an adequate system of internal controls to identify an occurrence, prevent or minimize violations, and implement this policy.

~~Contracts shall be used as commitment vouchers when purchasing or leasing goods and services as required by fiscal rule 3-1. If a contract is not required, a purchase order shall be used as a commitment voucher to support disbursement of funds for goods or services costing more than \$5,000 except that purchase orders need not be written for the following disbursements:~~

~~—Payroll related disbursements (withholding, authorized benefits, etc.).~~

~~—Disbursements for financial aid or tuition assistance programs.~~

~~—Disbursements for usual water, gas, electric, and customary local and long-distance telephone service including pagers and cell phones.~~

~~—Disbursements for dues, membership fees, subscriptions, and conference registration fees.~~

- ~~—Disbursements for postal and other delivery charges including messenger fees.~~
- ~~—Disbursements for routine internal services provided by a state agency or institution of higher education (e.g., printing services and materials ordered from the Division of Central Services, Capitol Complex lease payments, or legal services provided to state agencies and institutions of higher education by the Department of Law.).~~
- ~~—Disbursements for intra-agency or intra-institution purchases.~~
- ~~—Payments from a state program to individuals qualified for those program benefits.~~
- ~~—Payments calculated by a state agency or institution of higher education for obligations to be paid as required by a program within that state agency or institution of higher education. (E.g., formula distributions, other distributions required by regulatory or statutory formulas.)~~
- ~~—Payments made by a state agency or institution of higher education to reimburse state employees for moving expenses.~~
- ~~—Disbursements for rental agreements on copiers where the payment is based on cost per copy.~~
- ~~—Disbursements for the purchase of insurance.~~
- ~~—Other disbursements as approved in writing by the State Controller.~~

~~A state agency or institution of higher education may establish more restrictive thresholds for requiring purchase orders and contracts if they believe it is in the best interest of the state.~~

~~The following commitment vouchers, as are appropriate to the transaction, are authorized by the State Controller and shall be used as support for state agency or institution of higher education obligations that are not required to be supported by a state contract, purchase order, advice of employment, or a travel authorization or expense form: Invoice, billing, receipt, statement, court order or other written authorization for disbursement that describes goods or services being purchased or other reason for the disbursement and the amount to be paid.~~

8. ADVANCE PAYMENT

8.1 Advance Payment – A payment that is made prior to the receipt of goods or services.

8.2 ~~Accepted business practices~~ ~~Generally do not allow for any~~ advance payments of financial obligations ~~is not permitted.~~ ~~State~~ State contracts and other commitment vouchers shall not provide for advance payment of goods and or services, unless it is an established industry standard or unless the advance payment provides a benefit to the ~~state~~ State at least equal to the cost and risk of the payment. Any advance payment made pursuant to the terms of a ~~state~~ State contract ~~or other commitment voucher~~ requires the written approval of the ~~state~~ State ~~Controller~~, or a delegate, ~~authorized by the state controller, to approve advance payments,~~ except in the following instances included in the State Controller's policy on Advance Payments.:

- ~~—Annual payments for maintenance of office equipment or for IT maintenance (software and hardware), IT service agreements (including internet access, systems and database access), software licenses;~~
- ~~—Federal grants awarded by the state to a subgrantee;~~

- ~~—Payments for entertainers, speakers, training, class tuition and fees, conference registrations or seminars;~~
- ~~—Payments included in inter-agency contracts;~~
- ~~—Payments for construction permits;~~
- ~~—Post office box rentals;~~
- ~~—Membership dues;~~
- ~~—Easements in perpetuity if the complete rights are transferred upon payment;~~
- ~~—Insurance premiums;~~
- ~~—Licenses;~~
- ~~—Subscriptions;~~
- ~~—Maintenance agreements;~~
- ~~—Payments to expert witnesses;~~
- ~~—Payments to a court appointed mediator;~~
- ~~—Advertising;~~
- ~~—The department controller can approve advance payments up to \$10,000 after determining that the advance payment provides a benefit to the state at least equal to the cost and risk of the payment.~~

Emergencies

9. EMERGENCIES

9.1 Emergency - For purposes of this rule, an "emergency" is a situation that creates an immediate threat to public health, welfare, or safety, the functioning of state government, or preservation or protection of property requiring immediate response. —There is insufficient time to obtain a written waiver of the requirements for issuance of a commitment voucher pursuant to this fiscal rule before acquiring required goods or services to respond to the emergency.

9.2 Procurement – If the response to an emergency requires an immediate expenditure for goods or services and there is insufficient time to issue, or obtain a written waiver of the requirements for issuance of a commitment voucher pursuant to this fiscal rule, the head of an agency or institution, or his/her designee, may acquire goods and services necessary to respond to an emergency without execution of a ~~state~~ State contract or purchase order, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. Disbursement may be made upon receipt of invoices, receipts, or other ~~state~~ state~~state~~ments describing goods or services being purchased and the amount to be paid.

9.3 Follow up - Commitment vouchers shall be executed as soon as possible to define future performance obligations where required by the fiscal rules. As soon as practicable, and in no event later than the end of the next business day, a written ~~report~~ notification of the circumstances and the nature and value of the commitments shall be made ~~by~~ the chief financial officer of the agency ~~and~~ institution of higher education and to the ~~State~~ State Controller. —Commitment vouchers shall be executed as soon as possible to define future performance obligations where required by the fiscal rules.

Vendor Agreements

10. VENDOR AGREEMENTS

10.1 Vendor Agreement - A form provided by a vendor containing contractual terms and conditions relating to the goods and/or services to be provided.

10.2 A vendor agreement, including an on-line vendor agreement, shall not be executed in lieu of a purchase order or ~~state~~State contract, where one is required, unless it meets the conditions in the State Controller's Policy on Vendor Agreements. ~~but may be included as an attachment to the state commitment voucher.~~

10.3 Chief fiscal officers or procurement directors may authorize individuals to execute vendor agreements up to \$5,000, when there is no requirement that a ~~state~~State contract be executed for the purchase of the goods and/or services and all of the ~~following~~ conditions apply as outlined in State Controller's policy on Vendor Agreements.apply.

10.4 Agencies and institutions of higher education must delete or nullify by specific reference all conflicting or impermissible terms if a vendor agreement is attached as an exhibit to a State purchase order or State contract.

~~a. All terms and conditions in the vendor agreement have been reviewed by, authorized by, and the agreement signed by the agency's chief financial officer (or an authorized agency official, purchasing agent or State Controller contract signatory).~~

~~b. All terms and conditions that put the state at risk of paying more than the agreed price for the goods or services have been deleted from the agreement, except that the agreement may specify reasonable cancellation provisions or other commercially reasonable terms defining liquidated damages, rights, or obligations because of breach of the agreement.~~

~~c. All terms requiring that the state indemnify or hold harmless the vendor are deleted from the agreement.~~

~~d. All terms and conditions in the agreement limiting the liability of the vendor are deleted from the agreement. State agencies and institutions of higher education may agree to commercially reasonable limitation of liability/remedies provisions, or exclusion of consequential damages, so long as in the case of transactions in goods involving tangible risk from the nature of the goods, and in the case of all services, limitations of liabilities or exclusion of consequential damages exclude from their provisions damages and claims arising out of bodily injury (including death) and damage to tangible property.~~

~~e. All charges including taxes and incidentals are stated in the agreement.~~

~~f. Provisions providing for other than "Colorado" choice of law and venue shall require prior approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.~~

~~g. All amendments, changes, and deletions shall be in writing and approved by an authorized state official.~~

~~h. The agreement is complete and contains all attachments and schedules, which may be relevant to the agreement.~~

On-line Vendor Agreements

~~The same authority that is required for state contracts and other commitment vouchers is required to enter into on-line vendor agreements including software licenses that are subject to these rules. Unless the terms of an on-line vendor agreement are consistent with the requirements of this rule, state agencies and institutions of higher education shall not enter into an on-line vendor agreement, prior to it being~~

~~reviewed for legal sufficiency by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General. Only the State Controller or delegate shall approve on-line vendor agreements.~~

State Purchase Orders

~~When a purchase order is issued by a state agency or institution of higher education as required by this Rule 2-2, additions or changes to the approved, standard terms of the purchase order (see Appendix A to this chapter) shall be made consistent with the preceding and following rules. Changes to the standard terms of the purchase order may be approved by a procurement officer or delegate in fully delegated agencies or by the State Purchasing Office for partially delegated agencies.~~

~~a. No changes to the clauses governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, or Funds Availability may be made without State Controller approval;~~

~~b. No changes to the Indemnification, Choice of Law, and Non-discrimination provisions may be made without legal review and written approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.~~

~~When a state agency or institution of higher education issues a purchase order to another state agency or institution of higher education, the issuing agency or institution of higher education may change or delete any of the approved, standard terms of the purchase order (see Appendix A to this chapter).~~

Purchase Order Terms and Conditions

1. **Offer/Acceptance.** If this purchase order ("PO") refers to your bid or proposal, then this PO is an ACCEPTANCE of your OFFER TO SELL in accordance with the terms and conditions of the IFB/RFP, as stated in your bid. If no bid or proposal is referenced, this PO is an OFFER TO BUY, subject to your acceptance, which must be demonstrated by either your performance of this PO or by a formal acknowledgment in writing. Any COUNTER-OFFER TO SELL is automatically construed as a CANCELLATION of this PO unless a change order is issued accepting a counter-offer. In the event vendor form(s) or part(s) of forms are included in, or as an attachment to, any bid, proposal, offer, acknowledgment, or otherwise, vendor agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document and this PO shall supersede and control over those contained in vendor's form(s) regardless of any statement to the contrary in such form(s). Unless the purchasing agent specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

2. **Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. **Changes.** Vendor agrees to furnish products and/or services in strict accordance with the specifications, and at the price set forth for each item. Nothing in this PO may be added to, modified, superseded or otherwise altered except in writing signed by an authorized representative of the agency purchasing office and acknowledged by vendor. Each shipment received or service performed shall be only upon the terms contained in this PO, notwithstanding any terms contained in any invoice or other act of vendor other than acknowledgment of a written change order to this PO.

4. **Delivery.** Unless otherwise specified in the solicitation or in this PO, delivery shall be FOB destination. In its acceptance of any quotation offer, the agency is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. In the event of vendor's failure to deliver or perform as and when promised, the agency reserves the right to cancel its order, or any part thereof, without prejudice to its other rights, and vendor agrees that the agency may return all or part of any shipment so made, and may charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. **Rights in Data, Documents, Computer Software or Other Intellectual Property.** Unless otherwise agreed in writing, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials delivered by vendor in the performance of its obligations under this PO shall be the exclusive property of the State. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

6. **Quality.** The State will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

7. **Warranties.** All provisions and remedies of the Uniform Commercial Code ("UCC") relating to both implied and expressed warranties are herewith referred to and made a part hereof and are in addition to any warranties stipulated in the specifications.

8. **Inspection and Acceptance.** Final acceptance is dependent upon completion of all applicable inspection procedures. Should the products or services fail to meet any inspection requirements,

the agency may exercise all of its rights, including those provided in the UCC. The agency reserves the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with PO requirements, the agency may require vendor to perform the services again in conformity with PO requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the agency may (i) require vendor to take necessary action to ensure that the future performance conforms to PO requirements and (ii) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the agency in the termination provisions of this PO, or remedies otherwise available at law or in equity.

9. **Cash Discount.** The cash discount period will start from date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized agency representative, whichever is later.

10. **Taxes.** The State agency, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government use taxes [CRS 39-26-14(a) and 203, as amended]. Tax exempt numbers for the specific agency may be found elsewhere in this PO. Vendor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

11. **Prompt Payment.** State law and regulations provide that vendors will be paid within 45 days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by contract or special conditions of the PO. A State liability not paid within 45 days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the 46th day at the rate of 1% per month until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice the agency separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. [CRS 24-30-202(24), as amended.]

12. **Vendor Offset.** Pursuant to CRS 24-30-202.4, as amended, the State Controller may withhold payment for debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts, found to be owing to the State or its agencies by final agency determination or reduced to judgment, as certified by the State Controller.

13. **Assignment and Successors; Antitrust Claims.** Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of the State, which shall not be unreasonably withheld. This PO shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment of accounts receivable may be made only with written notice furnished to the purchasing agency or institution.

14. **Indemnification.** In the event any article sold or delivered under this PO is covered by any patent, copyright, trademark, or application therefor, vendor will indemnify and hold harmless the State from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments

arising out of manufacture, sale or use of such article in violation, infringement or the like of rights under such patent, copyright, trademark or application. If this PO is for services, to the extent authorized by law, vendor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services ordered by this PO.

15. INDEPENDENT CONTRACTOR. VENDOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER VENDOR NOR ANY AGENT OR EMPLOYEE OF VENDOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. VENDOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS PO. VENDOR ACKNOWLEDGES THAT

VENDOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS VENDOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. VENDOR SHALL HAVE NO AUTHORIZATION EXPRESS OR IMPLIED TO BIND THE STATE TO ANY AGREEMENT, LIABILITY, OR UNDERSTANDING, EXCEPT AS EXPRESSLY SET FORTH HEREIN. VENDOR SHALL PROVIDE AND KEEP IN FORCE, ~~AND SHOW PROOF OF UPON REQUEST,~~ WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHOW PROOF OF UPON REQUEST, AND SHALL BE SOLELY RESPONSIBLE FOR ITS ACTS AND THOSE OF ITS EMPLOYEES, AND AGENTS.

16. Communication. All communications, including reports, notices, and advice of any nature, concerning administration of this PO, prepared by vendor for the agency's use, must be furnished solely to the purchasing agent within the agency purchasing office.

17. Compliance with Laws. Vendor agrees to comply with all applicable federal and State laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back and collusion.

18. Americans with Disabilities Act (ADA) Requirements. If this solicitation contemplates the provision of services to the public, vendor shall, in addition to any other requirements under Title 11 of the ADA, comply with the Title 11 requirements of the ADA regarding the accessibility of State services and programs, as an explicit requirement. Vendor assures that, at all times during the performance of any resulting PO, no qualified individual with a disability shall, by reason of that disability, be excluded from participation in, or be denied benefits of, services, programs, or activities performed by vendor for the benefit of the State.

19. Insurance. Vendor shall obtain, and maintain at all times during the term of this PO, insurance as specified in the solicitation or order, and shall provide proof of such coverage.

20. Termination For Default/Cause. a. Except as otherwise agreed, the UCC shall govern in the case of goods. In the case of services, if vendor refuses or fails to timely perform any of the provisions of this PO, with such diligence as will ensure its completion within the time specified in this PO, the purchasing agent may notify vendor in writing of non-performance, and if not promptly corrected within the time specified, such agent may terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure to properly perform. Vendor shall continue performance of the PO to the extent it is not terminated and shall be liable for excess costs

incurred in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the PO price.

b. In the case of remedies exercised under this paragraph for services, or analogous remedies exercised under the UCC for in goods, the purchasing agency may withhold amounts due to vendor as the purchasing agent deems necessary to reimburse the purchasing agency for the excess costs incurred in curing, completing or procuring similar goods and services.

c. In the case of either goods or services, vendor shall not be in default by reason of any failure in performance of this PO in accordance with its terms, if such failure arises out of acts of God; acts of the public enemy; acts of the State or any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

d. If after rejection, revocation, or other termination of vendor's right to proceed under the provisions of the UCC or this clause, it is determined for any reason that vendor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

21. Termination For Convenience. a. If not accepted by written acknowledgment, this PO may be canceled by written or oral notice to vendor prior to shipment of goods or beginning of performance of services.

b. Unless otherwise agreed in writing, in addition to the rights and remedies governing goods in the UCC, the purchasing agent may, when the interests of the purchasing agency so require, terminate this PO in whole or in part for the convenience of the agency or institution. The purchasing agent shall give written notice of the termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall incur no further obligations except to the extent necessary to mitigate costs of performance. In the case of services or specially manufactured goods, the State shall pay reasonable settlement expenses, the PO price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that unaccepted work, in accordance with the cost principles promulgated in accordance with CRS 24-107-101, as amended. In the case of existing goods, the State shall pay reasonable settlement expenses, the PO price for goods delivered and accepted, reasonable costs incurred in preparation for delivery of the undelivered goods, and a reasonable profit for that preparatory work. The amount of the termination liability under this paragraph shall not exceed the amount of the PO price plus a reasonable cost for settlement expenses. Vendor agrees to submit a termination proposal as well as reasonable supporting documentation, cost and pricing data, and a certification as required CRS 24-106-101, as amended, upon request of the purchasing agent.

22. Purchase Order Approval. This PO shall not be valid unless it is executed by the purchasing agent for the purchasing State agency or institution. The State shall have no responsibility or liability for products or services delivered or performed prior to proper execution hereof.

23. Fund Availability; Federal Funds Contingency. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If this PO contemplates the purchase of goods to be delivered in a single installment, the State represents that it has set aside sufficient funds to make payment under this PO in accordance with its terms.

24. Choice of Law. This PO is made in, and the laws of the State of Colorado shall govern, in connection with the formation, performance and the legal enforcement of, this PO. Unless

otherwise specified in the solicitation or this order, venue for any judicial action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS 24-109-106, as amended, prior to commencing any judicial action against the State.

25. **Uniform Commercial Code.** All references in this PO to the UCC shall mean the UCC as adopted by the State of Colorado at Title 4, Colorado Revised Statutes, as amended.

26. **Non-discrimination.** Vendor agrees to comply with the letter and spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

27. **[Not applicable to Intergovernmental POs] ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS.** a. Vendor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Vendor shall not knowingly engage an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly engage an illegal alien to perform work under this PO. Contractor ~~certifies~~represents, warrants, and agrees that it (i) has

confirmed the employment eligibility of all employees who are newly hired for employment in the United States~~verified that it does not engage any illegal aliens~~, through participation in the ~~federal Basic Pilot~~ Employment Eligibility Verification-~~Program~~Basic Pilot and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(2)(b). Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and vendor shall be liable for ~~actual and consequential~~ damages.

b. Vendor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this PO.

Chapter 3 Rule 3-1 State Contracts

Rule 3-1

STATE STATE CONTRACTS

1. AUTHORITY:

Article V, Section 33, Constitution of Colorado

Article XII, Section 13 (2), Constitution of Colorado

~~Governor's Executive Order, signed October 1, 1977~~

Governor's Executive Order, signed April 7, 1978

2-2-320(2), C.R.S. (Attorney General Contract Approval)

24-30-903(d), C.R.S. (Telecommunications Contract Approval)

24-30-1104(1)(h), C.R.S. (Central Service Contract Approval)

24-30-1107, C.R.S. (Central Services Contracts)

24-30-1303(1)(a), C.R.S. (State Buildings Contract Approval)

24-31-101, C.R.S. (Attorney General - Legal Advisor)

24-30-202, C.R.S. (State Controller Authority)

24-101-105 (Procurement Code)

2. DEFINITIONS:

2.1 State Contract - Formal legally binding agreement between two State agencies and/or institutions of higher education or one State agency or institution of higher education and another party or an amendment to such agreement. State contracts, as used in this fiscal rule, do not include purchase orders. For the purpose of this fiscal rule, State contracts include, but are not limited to:

- Expenditure contracts
- Revenue contracts
- Sponsored Projects contracts
- Interagency contracts

2.2 Expenditure contracts – Formal legally binding agreement between one State agency or institution of higher education and another party or an amendment to such agreement, which ultimately results in an expenditure of funds, either directly or indirectly, or in an obligation to the State. Expenditure contracts include non-financial and in-kind contracts where the State incurs an obligation. Examples of expenditure contracts include, but are not limited to:

- Personal service contracts
- Outsource contracts
- Settlement agreements
- Leases and licenses of real property

2.2.1 Personal service contracts - Service or goods purchased by the State where the State or a third party is to receive a benefit. Individuals or firms performing these services are considered independent contractors and are not considered employees of the State.

2.2.2 Outsource contracts - Formal legally binding agreement between a State agency or institution of higher education and another party or an amendment to such agreement whereby the State agency or institution of higher education remains fully responsible for the provision of affected services and

maintains control over management decisions while another entity operates the function or performs the services. All contracts that meet the definition of outsource contracts shall be submitted to the State controller's office for review unless specifically exempted by State statute. Any outsource contracts that divert revenues due the State are subject to State Controller's review.

2.2.3 Settlement agreements - Formal legally binding State contract between two or more parties for the purpose of ratifying decisions reached concerning employment or contractual disputes.

2.2.4 Leases and licenses of real property – A lease is a formal legally binding agreement where the landlord give the right of possession to the State as tenant for a specified period of time. A license is a personal privilege to use the property without possessing any interest therein.

2.3 Revenue contracts - Formal legally binding agreement between one State agency or institution of higher education and another party or an amendment to such agreement, which does not result in the expenditure of funds or an obligation to the State. Examples of revenue contracts include, but are not limited to:

- Granting Franchises
- Sale of Real Property

2.3.1 Granting Franchises – In franchising external services to private firms, the State agency or institution of higher education grants a concession or privilege to a private-sector entity to conduct business in a particular market or geographical area, such as concession stands, hotels, and other services provided in certain State parks. The State agency or institution of higher education may regulate the service level or price, but users of the service pay the provider directly.

2.3.2 Sale of Real Property – The State agency or institution of higher education has statutory authority and sells State property and the State has no obligation regarding the real property after the sale is completed. Real property includes land and improvements such as buildings and other structures.

2.4 Sponsored Projects – Formal legally binding agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations.

2.5 Interagency Contracts - Formal legally binding agreements between two State agencies and/or institutions of higher education and enforced by the State Controller. These are State contracts as defined in this fiscal rule and shall be subject to the provisions and requirements of this fiscal rule.

~~Commitment Voucher – A purchase order, a state contract, an approved travel authorization, an advice of employment, or any other document appropriate to the transaction, prescribed by the State Controller, which creates a financial obligation to the state that ultimately results in a disbursement of funds by the state.~~

~~Employee/Employer – A relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also the details and means by which that result is accomplished. It is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient that the employer has the right to do so. The right to discharge is also an important factor, indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and equipment, and a place to work to the individual who performs the services.~~

~~Independent Contractor – An independent contractor relationship exists when the firm or individual is responsible to the state for the results of certain work but is not subject to the state's control as to the means and methods of accomplishing those results. Further, an independent contractor generally:~~

- ~~A. Has a place of business and a business listing in a directory when the services are offered to the public.~~
- ~~B. Selects the clients and is free to work for one or more during any given period of time.~~
- ~~C. Determines the time and place where work shall be performed.~~
- ~~D. Provides the tools and materials needed to perform the work.~~
- ~~E. Does not participate directly or indirectly in benefit programs of the state. For example, the individual is not covered by the state for Worker's Compensation covering injury to the worker, for public liability covering injury to others, or for unemployment compensation.~~
- ~~F. May agree to perform specific services for a fixed price and generally does not receive regular amounts at stated intervals.~~

~~Interagency Contracts — Formal legally binding agreements between two principal state agencies and/or institutions of higher education are state contracts as defined in this fiscal rule and shall be subject to the provisions and requirements of this fiscal rule.~~

~~Personal Service Contracts — Service or benefit purchased by the state where the state is to receive direct benefit. Individuals or firms performing these services are considered independent contractors and are not considered employees of the state.~~

~~State Contract — A formal legally binding agreement between two state agencies and/or institutions of higher education or one state agency or institution of higher education and another party or an amendment to such agreement, which ultimately results in the disbursement of funds. For the purpose of this fiscal rule, state contracts include, but are not limited to, outsource contracts, personal service contracts, purchased service contracts, and settlement agreements. State contracts, as used in this fiscal rule, do not include purchase orders.~~

~~Outsource Contracts — A formal legally binding agreement between a state agency or institution of higher education and another party or an amendment to such agreement whereby the state agency or institution of higher education remains fully responsible for the provision of affected services and maintains control over management decisions while another entity operates the function or performs the services. Outsource contracts includes contracting out, granting of franchises to private firms, and the use of volunteers to deliver public services. All contracts that meet the definition of outsource contracts shall be submitted to the state controller's office for review unless specifically authorized by state statute. State contracts that divert revenues due the state are subject to state controller's review.~~

~~Contracting Out — Contracting out is the hiring of private sector firms or nonprofit organizations to provide a good or service for the state agency or institution of higher education. Under contracting out, the state remains the financier and has management and policy control over the type and quality of services to be provided.~~

~~Granting franchises — In franchising external services to private firms, the state agency or institution of higher education grants a concession or privilege to a private sector entity to conduct business in a particular market or geographical area, such as concession stands, hotels, and other services provided in certain state parks. The state agency or institution of higher education may regulate the service level or price, but users of the service pay the provider directly.~~

~~Purchased Service Contracts — Service or benefit purchased by the state for a third party. An example is medical services received by a third party through a state contract between a medical care provider and the Department of Health Care Policy and Financing. Individuals or firms performing these services are considered independent contractors and are not considered employees of the state.~~

~~Purchase Order — A document prepared and signed by an authorized employee of a state agency or institution of higher education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this fiscal rule, a purchase order is not considered a state contract.~~

~~Settlement Agreements – Formal legally binding state contracts between two or more parties for the purpose of ratifying decisions reached concerning employment or contractual disputes.~~

3. RULE:

~~Each State agency or institution of higher education shall use a State contract as the commitment voucher in accordance with Fiscal Rule 2-2. Each State agency or institution of higher education is responsible for assuring that all constitutional and statutory requirements have been met prior to signing a State contract.~~

~~Each state agency or institution of higher education is responsible for assuring that the state contracts they initiate are within the intent of the appropriation and that the state contract is necessary and is the most economical and efficient means for accomplishing the identified tasks.~~

~~Each state agency or institution of higher education is responsible for assuring that all constitutional and statutory requirements have been met prior to signing a state contract.~~

Use of State Contracts

~~A State agency or institution of higher education shall negotiate and process a state contract when:~~

- ~~.01 — Acquiring personal services costing over \$100,000 including maintenance and service agreements.~~
- ~~.02 — Leasing or entering into a license involving payment by the State for the use of land, buildings, or other office or meeting space when the term is for more than thirty days.~~
- ~~.03 — Acquiring architectural services, engineering services, land surveying, industrial hygienist services, and landscape architectural services.~~
- ~~.04 — Expending capital construction, controlled maintenance, and/or emergency maintenance project funds in excess of \$100,000 except as otherwise provided in Fiscal Rule 4-1. Purchases of fixed equipment that do not require installation services may be purchased with a state purchase order.~~
- ~~.05 — Protecting the interest of the state may only be accomplished by using a state contract because other commitment vouchers are not considered sufficient to adequately protect the state. When questions arise in this area the State Controller's office or the Attorney General's office should be contacted for assistance.~~

State Contract Form and Provisions

~~.01 — State contract form~~

- ~~A. — All state contracts, including leases, shall be prepared on standard letter size paper, 8 1/2" X 11".~~

3.1 State contract form – All State contracts, including leases, shall be prepared on standard letter size paper, 8 ½ x 11”

3.2 State contract content – All State contracts, except Leases, Settlement Agreements, Sponsored Projects, and Interagency Agreement shall include the following elements:

- a. Identification of the Parties
- b. Funding Obligation Authority
- c. Statutory Authority
- d. Statement of Work

- e. Payment Terms
- f. Performance Period – beginning date and specific termination date or an event from which such date may be determined
- g. General Terms and Conditions
- h. Special Provisions (see appendix to this fiscal rule for Special Provisions)
- i. Signature Page

~~B. All state contracts shall be in a form approved by the State Controller.~~

3.3 Approved State Contract Forms

All State contracts shall be in a form approved by the State Controller. The State Controller has approved the following forms for use as or with State contracts:

3.3.1 Model Contracts – The State Controller has developed model contracts for personal services, information technology contracts and interagency contracts, and may develop other model contracts. See State Controller policy on Use of Model Contracts.

3.3.2 Waived Contracts – This type of form contract may be used where multiple contracts contain the same provisions and only the name of the contractor and amount of the contract changes. After the agency obtains approval from the State Controller for a waived contract, the agency can use the waived contract form without obtaining State Controller approval for each individual contract, as long as none of the provision, other than the name of the contractor and the contract amount amount are changed.

3.3.3 Contract Modifications – Contract modification tools may be used to modify the terms of an existing contract during the contract term. Each of these modification tools contains specific language for specific situations. See State Controller policy on Contract Modifications. The State Controller has approved the following contract modification forms:

- a. Options
- b. Funding Letters
- c. Change Orders
- d. Task Orders
- e. Contract Amendments

3.3.4

~~All state leases and licenses of real property shall be in a form approved by the State Controller.~~

~~All state leases and licenses shall contain:~~

- a. ~~the State Controller's approval clause~~ condition (Special Provision Number 1),
- b. ~~the Funds availability clause~~ (Special Provision Number 2),
- c. ~~a Collocation clause, The State Controller may agree to modify or waive the collocation clause upon good cause shown. and~~
- d. ~~Vendor offset (special provision number 7) found in Appendix A to this chapter of the state fiscal rules. The State Controller, with the concurrence of the Executive Director of the Department of Personnel and Administration, may agree to modify or waive the collocation clause upon good cause shown.~~
- e. ~~All state leases shall contain C~~ clauses specifying cancellation requirements where the premises are destroyed by fire and/or where the premises are subject to eminent domain.

3.3.5 Sponsored Projects Contracts – All sponsored projects contracts shall be in the form of approved by the State Controller. See State Controller policy on Sponsored Projects.

3.3.6 Settlement Agreements – All settlement agreements shall be in a form approved by the Office of the State Controller and the Attorney General's Office.

3.3.7 Any other contract form approved by the State Controller.

Issued by the State Controller's Office

~~02~~ State contract provisions

~~A. All state contracts, except leases and interagency agreements, shall contain the applicable Special Provisions found in Appendix A or Appendix B to this chapter of the state fiscal rules.~~

~~B. All State contracts shall contain a maximum dollar amount to be paid by the state during each fiscal year of the contract. Those state contracts where a maximum contract amount cannot be readily determined, shall contain one of the following provisions:~~

~~— "Payment pursuant to this Contract shall be made as earned, in whole or in part, from available state funds in an amount not to exceed the amount of funds available for the purchase of _____. The funds that are available may be used to pay multiple contractors for the services that are described in this contract. The liability of the state, at any time, for such payments shall be limited to the unexpended amount remaining of such funds.~~

~~— Multiple fiscal year contracts shall contain the following provision:~~

~~— "Payment pursuant to this contract shall be made as earned, in whole or in part, from available state funds in an amount not to exceed the amount of funds available for each fiscal year this contract is in effect for the purchase of _____. The funds that are available for each fiscal year may be used to pay multiple contractors for the services that are described in this contract. The liability of the State, at any time, for such payments shall be limited to the unexpended amount remaining of such funds."~~

~~In addition, state agencies and institutions of higher education using one of these provisions shall also request an encumbrance waiver from the State Controller.~~

~~C. All state contracts involving federal funds shall include the following provision:~~

~~"This Contract is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof."~~

~~D. All state contracts for the lease, easement, right-of-way or disposal of state property located in a flood plain to any non state, public or private party, shall reference in the conveyance: those uses that are restricted under identified federal, state or local flood plain regulations; those appropriate restrictions to the use of properties by the grantee or purchaser and any successors, except where prohibited by law; or withhold such properties from conveyance.~~

~~E. All state contracts shall contain a specific termination date or an event from which such date may be determined.~~

4. STATE CONTRACT APPROVALS ~~State Contract Approvals~~

The chief executive officer, or a delegate, of a ~~state~~State agency or institution of higher education shall sign all ~~state~~State contracts on behalf of the ~~state~~State agency or institution of higher education.

It shall be the responsibility of the contracting ~~state~~State agency or institution of higher education to obtain all required approvals. Approvals ~~by of~~ certain ~~state~~State agencies ~~and institutions of higher education~~ are required by statute, executive order, or fiscal rule depending on the subject matter of the ~~state~~State contract. Proof of all required signatures ~~indicating the approval of state agencies and~~

~~institutions of higher education~~ shall be retained by the contracting ~~state~~State agency or institution of higher education. ~~State~~State contracts requiring central approvals include:

~~4.1.01~~ Service contracts require the approval of the ~~State~~State Personnel Director or a delegate. -

~~4.02~~ Construction contracts and controlled maintenance contracts require the approval of the ~~State~~State Architect-Buildings Director, or a delegate, unless otherwise exempted by statute or waived by the State Architect.

~~4.03~~ Real property contracts, including leases, easements, and rights of way contracts, require the approval of the Director of the Real Estate~~State~~ Program or a delegate, unless otherwise exempted by statute. Excluded from this requirement are those real properties administered by the ~~State~~State Board of Land Commissioners and the Department of Transportation.

~~4.04~~ Communication system contracts over \$10,000 involving telephone, radio, microwave, ~~teale~~le-type, closed circuit television, automated data processing communications systems require the approval of the ~~State~~State Communications Coordinator, or a delegate.

~~4.05~~ Legal and paralegal service contracts require the approval of the Attorney General's Office.

~~4.06~~ Centralized service contracts require the approval of the Director of the Division of Central Services, or a delegate, for all ~~state~~State agencies within the counties of Adams, Arapahoe, and Jefferson and the city and county of Denver. Examples include ~~state~~State contracts for the acquisition of the following: motor pool operation, motor vehicle maintenance, mail or messenger services, office copying, graphic design for print media, printing and binding, microfilming, or design of management forms.

~~4.07~~ Debt collection service contracts require the approval of the ~~State~~State Controller, or a delegate.

~~4.08~~ ~~State~~State agency or institution of higher education financial systems used to record their financial transactions and financial information and to develop their financial reports and prepare their financial ~~state~~State~~ments~~ shall be approved by the ~~State~~State Controller, or a delegate.

~~4.9~~ All information technology projects with a purchase price of over \$100,000 require the approval of the Office of Information Technology.

~~All state contracts shall be executed by the State Controller or by an individual delegated to execute state contracts by the State Controller. If an attempt is made to execute a State Contract without the approval of the State Controller, or a delegate, the state contract shall be null and void and not binding against the state. However, every person involved in incurring the obligation shall be jointly and severally liable for the obligation.~~

5. STATE CONTRACT LEGAL REVIEW~~State Contract Legal Review~~

~~At the discretion of the State Controller or delegate, State contracts shall be reviewed by the Attorney General's Office. This does not include All state contracts shall be reviewed by the Attorney General's office except for~~ interagency contracts and those ~~state~~State contracts for which the ~~State~~State Controller has designated in writing an attorney, employed by the ~~state~~State agency or institution of higher education and authorized by the ~~State~~State Attorney General, to perform the required legal review. ~~If the state agency or institution of higher education's legal review raises a question concerning the legality of the state contract, the question shall be referred to the Attorney General's Office.~~

Review by the Attorney General's Office or an attorney delegated by the State Controller shall include the following:

- ~~5.104~~ Compliance with the Colorado Constitution, state statutes, regulations, and executive orders;
- ~~5.202~~ Authority of the contracting state agency or institution of higher education;
- 5.3 The contract contains all essential elements of a legally binding contract;
- 5.4 The contract contains the required signatures; and
- 5.5 The Statement of work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances applicable to the contract to be enforceable.

~~The~~ Attorney General review may also include:

- ~~5.603~~ Risk analysis, including advice regarding significant risks and issues in any particular transaction. The Agency remains responsible for risk assessment and the decision whether to proceed with a contract despite the exposure to risks; appropriate terms and conditions.
- ~~5.7.04 Availability of specific remedies; Conformity between the RFP or IFB and final contract, as appropriate.~~
- 5.8 Compliance with grant conditions, federal funding requirements, or required assurances.
- ~~.05 Vendor compliance with all preconditions to the contract, as appropriate.~~

~~If during the course of the legal review a question should arise as to state contract language that cannot be resolved, it shall be referred to the State Controller together with a memorandum detailing the unresolved~~

~~issue for resolution. A copy of the memorandum shall also be sent to the principal contracting state agency or institution of higher education.~~

~~Outsource contracts shall be reviewed by the state Attorney General, or a delegate, but need not be signed and executed by the State Controller, or a delegate, unless the state contract requires an expenditure of state funds or the Attorney General identifies an issue concerning the expenditure or potential expenditure of state funds.~~

6. REVIEW AND APPROVAL BY THE STATE CONTROLLER~~Review and Approval by the State Controller~~

Upon receipt of a state contract, the State Controller, or a delegate, shall review all the state contracts, except revenue contracts, to ascertain:

- Whether ~~or not~~ the proposed expenditure is authorized by the appropriation to which it is proposed to be charged;
- Whether ~~or not~~ the prices or rates are fair and reasonable and in accordance with law or administrative rules; ~~or are fair and reasonable and~~
- Whether ~~or not~~ the amount of the expenditure exceeds the unencumbered balance;
- Whether the expenditure is in compliance with all statutes, fiscal rules, and policies.

Upon approval, the state contract shall be executed by affixing the signature of the State Controller, or a delegate.

All State contracts, except for revenue contracts, shall be executed by the State Controller or by an individual delegated to execute State contracts by the State Controller. If an attempt is made to execute a State Contract without the approval of the State Controller, or a delegate, the State contract shall be null and void and not binding against the State. However, every person involved in incurring the obligation shall be jointly and severally liable for the obligation.

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See State Controller policy on Review and Approval of State Contracts.

~~Under certain circumstances the State Controller may delegate in writing authority to execute state contracts. Delegation of the State Controller's signature authority does not eliminate the requirement that all state contracts have a legal review or exempt any state agency or institution of higher education from securing the required state contract approvals, as provided in the state contracts approval section of this fiscal rule.~~

~~Delegation granted by the State Controller to state agencies to execute state contracts on his behalf is limited to the specific types of contracts identified in the Letter of Delegation issued to the state agency. All contract types that are not specifically identified as delegated contracts are not delegated contracts and must be executed at the State Controller's Office.~~

7. INTERAGENCY CONTRACTS~~Interagency~~ **Contracts**

Interagency contracts require approval of the ~~State~~State Controller, or a delegate, unless the ~~state~~State agency or institution of higher education disbursing the funds has been delegated ~~State~~State Contract signature authority by the ~~State~~State Controller. Interagency contracts shall, at a minimum, include the following ~~elements~~provisions:

- a. Identificaition of the parties to the State contract;
 - b. Appropriation authority, including fund, State agency or institution of higher education, appropriation code, and encumbrance number;
 - c. Statement of work;
 - d. Statement of consideration (if applicable);
 - e. Payment and other performance;
 - f. Definition of breach and remedies (consistent with Fiscal Rule 2-6); and
 - g. Signature Page
- ~~.01 Identification of parties to the state contract;~~
- ~~.02 Appropriation authority, including fund, state agency or institution of higher education, appropriation code, and encumbrance number;~~
- ~~.03 Scope of work;~~
- ~~.04 Statement of consideration, (if applicable);~~
- ~~.05 Payment and other performance; and~~
- ~~.06 Definition of breach and remedies (shall be consistent with Fiscal Rule 2-6).~~

8. EMPLOYEE/EMPLOYER OR INDEPENDENT CONTRACTOR~~Employee/~~**Employer or Independent Contractor**

Careful distinction shall be made between work that should be accomplished by persons who are employees of the ~~state~~State and work that may be accomplished by individuals or firms on a personal services contract. The responsibilities and obligations of the ~~state~~State differ between employee/employer arrangements and agreements with independent contractors. The ~~state~~State has a

third party liability for the acts of its employees, whereas independent contractors are liable for their own actions. The status should be carefully considered and cases of doubt generally resolved in favor of the employee classification. An erroneous classification as an independent contractor may result in serious penalty to the ~~state~~State for failure to deduct applicable taxes. State agencies and institutions of higher education should follow guidelines issued by the Internal Revenue Service and the Colorado Division of Human Resources as well as Colorado statutes and legal opinions in determining whether an individual is an employee or independent contractor.

9. EXCEPTIONS TO RULE:

Excluded from ~~the provision of~~ this fiscal rule are:

~~.01 — Contracts that do not provide for the disbursement of funds, with the exception of outsource contracts and contracts that divert revenues due the state.~~

~~.02 —~~ StateState contracts for personal services exempted from the ~~state~~State personnel system by the Colorado Constitution and paid through an authorized ~~state~~State payroll system. Examples include appointees by the Governor and Lieutenant Governor and their administrative staffs, members of boards or commissions, faculty members of educational institutions, attorneys at law serving as assistant attorneys general, and employees of the Legislative and Judicial Departments of the ~~state~~State. These ~~state~~State contracts are considered to be advises of employment and, therefore, are not covered by this fiscal rule.

SPECIAL PROVISIONS

These se Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be ~~deemed~~-valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, and its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees

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and related costs, incurred as a result of any act or omission by cContractor, or its employees, agents, subcontractors, or assignees, pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, ~~as~~ now or hereafter amended.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-12.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the ~~s~~State. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the ~~s~~State pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the ~~s~~State does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the ~~s~~State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation ~~and provide proof of such insurance when requested by the state~~ and unemployment compensation insurance in the amounts required by law, and provide proof thereof when requested by the State, and shall be solely responsible for its acts and those of its employees and agents.

5. **NONCOMPLIANCE WITH LAW ON DISCRIMINATION.** Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations in effect or hereafter established. Contractor agrees to comply with including, without limitation, the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. ~~No Any provision of this contract, included whether or not incorporated herein by reference herein, shall which provides for binding arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other Sspecial Pprovision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shawill not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.~~

7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, for the term of this contract and any extensions, cContractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that cContractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to cContractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor ~~certifies~~represents, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for employment in the United States verified that it does not employ any illegal aliens, through participation in the ~~Basic Pilot~~ Eligibility Verification Pilot Program/Basic Pilot administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of

Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., ~~may~~ shall be cause for termination for breach and, if so terminated, ~~c~~Contractor shall be liable for ~~actual and consequential~~ damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen of or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) ~~has~~ shall produced one (1) form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised June 13, 2007~~October 25, 2006~~

Chapter 5 Rule 5-1 Travel

CHAPTER 5: TRAVEL

FISCAL RULE

NUMBER

Travel

5-1

Appendix A - Maximum Allowable Meal Per Diem Rates for CONUS Travel

Appendix B - Maximum Allowable Meal Per Diem Rates for Travel to Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and Possessions of the United States.

Appendix C - Maximum Allowable Meal Per Diem Rates for Travel to Foreign

Rule 5-1 TRAVEL

AUTHORITY:

24-9-104(2), C.R.S. (Mileage Allowance)
24-30-202(20.1), C.R.S. (Travel Advance Limit)
24-30-202(26), C.R.S. (State Controller's Authority)

DEFINITIONS:

Approving Authority - An individual delegated the authority, in writing, by the chief executive officer of the state agency or institution of higher education to approve matters related to official travel.

Commercial Lodging - Any accommodations that are available or offered for use by a traveler for which a rental schedule has been established and payment is required for its use.

CONUS - The 48 continental United States, including the District of Columbia.

Electronic Signature - Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual signature, ~~and that complies with the rules prescribed by the Director of the Department of Personnel & Administration for governmental transactions with state agencies and institutions of higher education.~~ "Electronic signature" includes digital signatures.

Expenses Incurred for the Benefit of the State - Expenses incurred that enable a state employee or a state official to perform their assigned duties or enable a state agency or institution of higher education to carry out the responsibilities required by law.

In-State Travel - Travel within the State of Colorado and to the immediate area outside the State that is a necessary part of an otherwise "in-state" trip.

International Travel - Travel to any destination not considered in-state or out-of-state.

Out-of-State Travel - Travel within CONUS, other than Colorado. Also travel to Alaska and Hawaii.

Political Expenses - Expenses incurred in relation to activities that are primarily designed to further the interests of a candidate, political party, or special interest group.

~~Reasonable Tips - Tips given to servers for meals are considered reasonable if they are not greater than 20% (twenty percent) of the total cost of the meal, excluding taxes.~~

State Travel Card - The travel card(s) provided to state employees through the Statewide Travel Management Program (~~124-30-1118, C.R.S.~~ CCR 103-1).

Transportation - Travel by commercial airline, railroad, bus, taxicab; state-owned, leased, or personally owned automobile or airplane; or any other means of conveyance.

RULE:

Issued by the State Controller's Office
Rule 5-1

Date Issued: 4/1/71
Date Revised: 6/15/07

Fiscal Rule 5-1 addresses travel prepayment and reimbursement to state employees or state officials.

Travel charged to the Sstate, regardless of the funding source, shall be for the benefit of the Sstate, only for the time period necessary, and completed using the most economical means available which will satisfactorily accomplish the Sstate's business.

The traveler shall determine those expenses incurred for the benefit of the Sstate and request prepayment of or reimbursement for only those expenses. The approving authority shall review the expenses claimed by the traveler and authorize prepayment of or reimbursement for only those expenses incurred for the benefit of the Sstate. The approving authority may require documentation, ~~e.g., receipts~~, in addition to documentation prescribed by these rules that is deemed necessary or advisable in order to review ~~expenses~~ and authorize expenses, reimbursements.

Required Travel Authorization

- .01 In-state Travel - Prior authorization for in-state travel may be required by the approving authority for all in-state travel.
- .02 Out-of-state Travel - Prior written or electronic authorization by the chief executive officer, or a delegate, of a state agency or institution of higher education shall be required for all out-of-state travel.
- .03 International Travel - Prior written or electronic authorization by the chief executive officer, or a delegate, of a state agency or institution of higher education and the governor, or a delegate, shall be required for all international travel, except for the Department of Higher Education. Prior written authorization by the executive director of the Colorado Commission on Higher Education shall be required for all international travel by employees within the Department of Higher Education. The executive director of the Colorado Commission on Higher Education, with approval of the State Controller, may delegate the authority to approve international travel to the chief executive officer, or a delegate, of a specific higher education institution.
- .04 Travel at no cost to the Sstate - Prior authorization by the approving authority is required for any official state business travel for which reimbursement is made directly to the state employee or the state agency by the non-state organization.

Travel Advances

~~Travel advances shall be obtained by using the state travel card whenever possible. Travel advances may be requested from the state if the travel advance cannot be obtained from the state travel card. Under no circumstance shall a travel advance be requested from the state in excess of the statutory limit. CRS 24-30-202 (20.1), establishes the maximum authorized amount for a travel advance.~~

~~Travel advances requested from the state must be authorized by the approving authority, approved by the chief fiscal officer, or a delegate, of the state agency or institution of higher education, and contain the following statement, signed manually or electronically by the traveler:~~

~~"I hereby appoint and constitute the State Controller or delegate my attorney-in-fact for the purpose of receiving all funds due me and reimbursing the State of Colorado there from and may demand and receive any monies or credits payable to me from the State of Colorado to the extent necessary to accomplish said reimbursement."~~

~~It shall be the responsibility of the chief fiscal officer, or a delegate, to take steps necessary to assure that each travel advance received from the state is repaid within 60 days after the conclusion of authorized travel.~~

Prepayment/Travel Reimbursements of Travel Expenses

Prepayment of expenses paid as per diem and other estimated out-of-pocket expenses shall be approved by the approving authority and authorized by the chief fiscal officer, or a delegate, of the state agency or institution of higher education. In such cases, the prepayment shall be requested from the State by completing a travel prepayment/reimbursement voucher or through the state Travel Card if the ability for cash advances has been authorized by the designated Travel Compliance Officer. The amount of the prepayment shall be computed using the traveler's known per diem amounts and/or pre-approved estimated expenses. Under no circumstance shall a travel prepayment exceed the statutory limit as established by CRS 24-30-202.

Distribution of prepayments to travelers shall be made only within 5 working days of commencing the trip. An after-trip reconciliation is only required if the trip was not taken, varies from the approved length, or if lodging, commercial transportation, ~~or~~ car rental expenses, or miscellaneous business expenses are prepaid. The purpose of the reconciliation is to ensure that the prepayment is equal to the actual costs incurred. State agencies may require the traveler provide documentation the approved trip was indeed taken by the traveler. Such documentation shall be appropriate for the circumstances.

A separate travel prepayment/reimbursement voucher is to be processed for any allowable expenses incurred but not prepaid.

Upon completion of travel, a travel reimbursement voucher must be filed timely to obtain reimbursement for approved travel expenses. The travel reimbursement voucher shall contain a statement as to the purpose of the travel.

Lodging, meals, and other reimbursable travel expenses shall only be reimbursed for the period of time necessary for the traveler to accomplish the state business. When a traveler uses an alternate method of transportation, which is authorized by the approving authority, any additional time required to complete the state business shall be charged to approved leave.

If lodging, meals, or transportation expenses are included in conference fees, registration fees, or are otherwise furnished at no additional cost to the traveler, no reimbursement shall be made for these items. If, however, a meal included in a commercial transportation ticket is not adequate, and the traveler incurs an additional meal expense, reimbursement for that meal may be claimed.

When reimbursement for travel expenses is claimed, the travel voucher shall contain the following certification signed manually or electronically by the traveler:

"I certify that the statements in the above schedule are true and just in all respects; that payment of the amounts claimed herein has not and will not be reimbursed to me from any other sources; that travel performed for which reimbursement is claimed was performed by me on State business and that no claims are included for expenses of a personal or political nature or for any other expenses not authorized by the Fiscal Rules; and that I actually incurred or paid the operating expenses of the motor vehicle for which reimbursement is claimed on a mileage basis."

The travel reimbursement voucher shall be endorsed manually or electronically by the approving authority unless the travel has been pre-approved and the reimbursable expenses claimed are within the limits established prior to the trip.

The following rates shall be used for prepayment or reimbursement of travel expenses:

.01 Lodging

Issued by the State Controller's Office
Rule 5-1

Date Issued: 4/1/71
Date Revised: 6/15/07

Employees authorized to travel shall be reimbursed the actual cost of reasonable accommodations. Employees may be required to use approved or designated lodging facilities in certain areas to assist the state agency or institution of higher education in controlling travel cost. A state Travel Card, if available to the traveler, shall be used to pay for all lodging expenses. Prepayment shall be made based on a reasonable estimate of the cost. ~~R/~~Reimbursement shall be limited to the actual cost of commercial lodging. Receipts for lodging shall be obtained and submitted ~~with the travel expense voucher.~~

.02 Meals and Incidental Expenses

Employees authorized to travel shall be prepaid or reimbursed for meals, the actual cost of meals, including tax and ~~reasonable tip up to the total at~~ per diem rates established by ~~these the State Controller in Appendices A, B, and C to this chapter of the state Fiscal Rules.~~ The authorized meal per diem rate may be claimed for each meal the traveler would normally have eaten while traveling. If a meal is included in a conference fee the meal shall not be claimed for prepayment or reimbursement unless the meal is determined to be inadequate by the traveler. If a meal provided by a commercial carrier as part of the transportation ticket is deemed inadequate by the traveler then the per diem for that meal can be claimed. The authorized incidental expense per diem may be claimed for each overnight stay.

These rates will closely follow the per diem rates established by the federal government for its employees and be published periodically by the State Controller.

The incidental expense per diem may be used for personal telephone calls, miscellaneous tips, and other miscellaneous items. The chief executive officer, or a delegate, of an agency or institution of higher education may approve a higher incidental expense per diem rate for international travel based on the traveler's destination. Under no circumstance shall the higher incidental per diem rate exceed \$15.00 per overnight stay.

Under no circumstances shall an employee claim more than the established per diem rate. ~~Receipts for The actual costs of meals are not required. (including meal tips) in any day may be reimbursed up to the maximum aggregate per diem amount established for the location and time while traveling. Where adequate meals are included in conference fees, registration fees, or commercial transportation tickets, maximum rates for those meals may not be included in the maximum aggregate daily per diem amount for the location and time while traveling. For example, the costs of meals may be reimbursed up to the total daily per diem rate for a full day of travel (if no meals are furnished), without regard to maximum individual meal rates. If lunch is included in a conference fee for a full day of travel, the actual costs for breakfast and dinner may not exceed the total of the per diem rates for breakfast and dinner. The costs of meals for a partial day of travel, while traveling, over breakfast and lunch (or lunch and dinner) may be reimbursed up to the total per diem rate for breakfast and lunch (or lunch and dinner), without regard to individual maximum meal rates.~~

~~Agencies shall inform travelers that meal expense claims may not be based on estimates or approximations. All requests for reimbursement of the actual cost of meals shall be documented by original receipts or copies thereof, except that travelers may be reimbursed for up to a maximum of \$25 per day (including tips) without meal receipts. Reasonable tips for meals may be reimbursed without a receipt showing the amount of the tip.~~

~~Travel expenses may be reimbursed before reconciling receipts to the amount claimed, so long as the agency has developed a suitable risk-based approach for post-settlement auditing, which may be on a sample basis.~~

.03 Transportation

Employees authorized to travel shall be prepaid/reimbursed only for the cost equivalent of the most cost beneficial method of transportation available, which will satisfactorily accomplish the state business.

A state Travel Card, if available to the traveler, shall be used to pay for all commercial transportation expenses. Prepayment shall be made based on a reasonable estimate of the cost. R/reimbursement shall be limited to the actual cost of commercial transportation. Receipts for transportation shall be obtained and submitted.

~~If travel includes commercial transportation and the travel tickets were purchased by the state for the traveler, ticket receipts need not be submitted with the travel voucher. If, however, the travel tickets were purchased by the traveler, a receipt shall be submitted with the travel voucher.~~

.04 Rental Vehicles

Employees authorized to travel shall be prepaid/reimbursed for the cost of a rental vehicle if the use is required for business purposes and was pre-approved by the approving authority. A receipt is required for all rental vehicle expenditures. The traveler is required to use a rental vehicle vendor approved by the State Travel Management Program. A state Travel Card, if available to the traveler, shall be used to pay for all rental vehicle expenses. Prepayment shall be made based on a reasonable estimate of the cost. R/reimbursement shall be limited to the actual cost of the rental vehicle expense. Receipts shall be obtained and submitted.

Various upgrades provided at extra cost by vehicle rental companies such as satellite radio, GPS units, etc. are not reimbursable unless necessary for business or safety reasons and approved by the approving authority.

Other Prepaid or Reimbursable and Non-Reimbursable Travel Expenses

.01 Prepaid or Reimbursable travel expenses

In addition to lodging, meals, and transportation, the following actual expenses incurred as a necessary part of approved travel may be prepaid (subject to the approval process outlined above) or reimbursed.

- A. Reasonable tips paid by the traveler for bellhops, porters, maids, and ground transportation. Tips paid in conjunction with meals are included in the meal allowance and cannot be claimed separately.
- B. Commercial transportation such as taxi and shuttle expenses paid by the traveler. A receipt shall be required for each individual ride in a commercial vehicle, if over \$25.
- C. Camping site fees paid by the traveler for a commercial camp ground or a state or national park. A receipt shall be required if over \$25.
- D. Parking fees paid by the traveler. A receipt shall be required for any single fee over \$25.
- E. Registration fees paid by the traveler. A receipt is required for all registration fees paid.

- ~~F. Rental car costs paid by the traveler. A receipt is required for all rental car expenditures. Telephone, fax, internet access, and other similar miscellaneous business expenses paid by the traveler for official state business. A receipt shall be required for any single charge over \$25.~~
- ~~G. Telephone, fax, and other similar charges paid by the traveler for official state business. A receipt shall be required for any single charge over \$25.~~
- ~~G.H. Toll road charges paid by the traveler.~~
- ~~I.H. Traveler's checks or transaction charges for the use of the state travel card paid by the traveler. A receipt shall be required if the total amount claimed for reimbursement is over \$25.~~
- ~~J. The actual cost of one personal telephone call per day, not to exceed two dollars, while the employee is traveling.~~

.02 Non-reimbursable travel expenses

The following expenses shall not be reimbursed:

- A. Alcoholic beverages purchased by the traveler.
- B. Entertainment expenses paid by the traveler.
- C. Personal expenses incurred during travel that are primarily for the benefit of the traveler and not directly related to the official purpose of the travel. ~~Examples include the purchase of personal hygiene items, magazines, movie rentals, and other miscellaneous items.~~
- D. Political expenses paid by the traveler.
- E. ~~Travel insurance expenses paid by the traveler. The state Travel Card provides travel insurance while other types are not justifiable for business purposes; therefore expenses paid by the traveler for the following are not reimbursable:~~
 - ~~a.f. Collision damage waiver/loss damage waiver for rental cars~~
 - ~~b.g. Supplemental liability insurance on rental vehicles~~
 - ~~c.h. Value premiums on airline tickets~~
 - ~~d.i. Trip cancellation insurance~~
 - ~~e.j. Additional liability for rental cars~~
 - ~~f.k. Personal accident insurance on rented vehicles~~
 - ~~g.l. Supplemental life insurance for airline or common carrier travel.~~
- F. The cost of traffic fines and parking tickets.

Certification

A travel prepayment/reimbursement voucher must be filed to obtain prepayment of or reimbursement for approved travel expenses and shall contain a statement as to the purpose of the travel.

The travel prepayment/reimbursement voucher shall contain the following certification signed manually or electronically by the traveler:

"I certify that the statements in the above schedule are true and just in all respects; that payment of the amounts claimed herein has not and will not be reimbursed to me from any other sources; that travel performed for which prepayment/reimbursement is claimed was or will be performed by me while on State business and that no claims are included for expenses of a personal or political nature or for any other expenses not authorized by the Fiscal Rules; and that I actually incurred or paid the operating expenses of the motor vehicle for which reimbursement is claimed on a mileage basis. Further, I hereby authorize the State to deduct from my pay any amount prepaid to me in excess of my actual incurred expenses."

The travel prepayment/reimbursement voucher shall be endorsed manually or electronically by the approving authority.

EXCEPTIONS TO RULE:

.01 Allowances for members of statutory boards or commissions

Board and commission members shall be paid in accordance with the statutory provisions establishing the board or commission. Board members may be reimbursed for actual and necessary expenses incurred in the performance of their duties. These actual and necessary expenditures should be reasonable under the circumstances and the board or commission member should be made aware that public funds are the source of the reimbursement.

Board or commission members may also be reimbursed for childcare services. The chief executive officer, or a delegate, of the state agency or institution of higher education shall determine the need for childcare reimbursement. Reimbursement shall not be made to a family member and receipts shall be furnished with the reimbursement request.

.02 Allowances for state job applicants

In order to obtain the best-qualified individual for a given position in the state it may be necessary to pay interview related travel expenses for job applicants. At the discretion of the chief executive officer, or a delegate, such travel expenses may be reimbursed to the applicant at the per diem rate established by the State Controller for state employees.

.03 Allowances for travel by the Governor of Colorado

In the case of travel by the Governor, security, protocol, ceremonial functions, and overall time demands may require considerations not accorded any other state official or employee. Protocol may often require the spouse to travel with the Governor.

The use of state-owned aircraft, commercial airlines or state-owned automobiles by the Governor shall depend upon time constraints and security needs.

When the Governor allocates travel costs between official state business and personal or political, the allocation shall take into account all the various factors involved in the trip.

.04 Allowances for travel not solely for state business

In some instances the purpose of travel may not be solely for state business. It may be partially for official business and partially for personal or political reasons. In these instances, the individual involved shall make a reasonable allocation of the expenses. Where such an allocation is made, the travel reimbursement request shall contain sufficient documentation to indicate the allocation made and the basis for the allocation.

If a state employee obtains lower rates for lodging or transportation because travel is extended for personal or political reasons, these lower rates shall also apply to the business portion of the trip.

.05 Allowances for travel paid directly by a non-state entity

In limited instances, State officials and employees may be invited to attend committee meetings, seminars, or conferences concerning official state business where their travel expenses are either paid directly by the sponsor or they are reimbursed by the sponsor. In such instances the employee may accept the invitation if the travel has been approved by their approving authority and it does not violate the "Ethics in Government" provisions of Article XXIX of the Colorado Constitution (also known as Amendment 41).

.06 Allowances for travel with spouse, relatives, or friends

The state shall not reimburse the cost of an employee's spouse or other person(s) accompanying the state employee on a business trip, unless specifically provided in this fiscal rule. ~~Conversely, the state shall not receive any benefit from a lower travel fare resulting from the state employee's spouse, relative, or friend accompanying the employee on a business trip.~~

~~Sufficient documentation of the cost of the official business portion of the trip shall be included with the travel reimbursement voucher.~~

.07 Allowances for travel wholly within a single day

If travel is wholly within a single day, reimbursement for lunch shall not be allowed. If, however, an employee leaves home on official business prior to 5:00 a.m. and/or remains away from home after 8:00 p.m. and the official business requires the employee to extend the workday, the approving authority may allow a meal allowance for breakfast and/or dinner for the traveler. If breakfast and/or dinner ~~are is~~ paid for an employee while ~~not~~ traveling in a single day, the amount paid is reportable as income on an employee's W-2.

.08 Allowances for travel by leased or privately owned aircraft

- A. A state agency or institution of higher education shall not lease an aircraft without the prior written approval of the Aircraft Section of the Colorado State Patrol in the Department of Public Safety, regardless of the source of funds. This includes the lease of any replacement aircraft for those presently operated by the state agency or institution of higher education.
- B. A state agency or institution of higher education shall not authorize the use of a privately owned aircraft without the prior written approval from the Office of Risk Management. No reimbursement shall be allowed unless the required prior written approval has been secured.

.09 Allowances for travel by privately owned automobile

Employees shall be allowed mileage fees for each mile actually and necessarily traveled while on official state business. Employees shall normally be reimbursed at the mileage rate designated for two-wheel drive vehicles. Employees shall only be reimbursed at the mileage rate designated for four-wheel drive vehicles when the use of four-wheel drive is necessary because of road, terrain, or adverse weather conditions.

Commuting expenses incurred in traveling between an employee's residence and a primary work location are non-reimbursable employee expenses. However, upon approval of the appointing authority, an employee may be reimbursed for use of a personal automobile when commuting

between his/her residence and a temporary work location. Reimbursement shall be for the number of miles between the employee's residence and the temporary work location or the employee's regular work location and the temporary work location, whichever is less.

CRS 24-9-104(2), establishes the mileage rate to be used for reimbursement for official state travel.

.10 Allowances for travelers furnishing their own lodging and meals

When employees who are traveling are furnishing their own lodging and meals, the state agency or institution of higher education may negotiate a special per diem rate for that period of travel. The rate negotiated shall be on a case-by-case basis and under no circumstance shall the negotiated rate exceed the normal per diem rates established by this fiscal rule.

.11 Travel Insurance

Travel insurance may be purchased when it benefits the state if approved in writing by the approving authority.

.12 Receipts

Chief Executive Officers may waive the requirement for a receipt in extenuating circumstances upon approval of a written certification by the traveler that the cost was incurred and the reason why the receipt was not obtained or available. ~~meal or other cost was incurred and the reason why the receipt was not obtained or available.~~ Further, Chief Executive Officers may establish alternative document requirements for recurring travel into locations, e.g. international travel, or for group travel, where compliance with the receipt requirement is determined to be impractical.

Maximum Allowable Meal Per Diem Rates For CONUS Travel

Effective ~~August~~July~~October~~ 1, 2005~~6~~7

The following tables list the per meal breakdown for the reimbursement rates for meals within CONUS (Appendix A), Alaska, Hawaii and other US possessions (Appendix B), and foreign countries (Appendix C), and the allocation of per diems for foreign countries (Appendix D). These meal rates should be used when calculating the amount of potential reimbursement available for part day while traveling. The daily total is the maximum per diem available for full day while traveling without regard to meal allocations.

Authorized Per Meal Reimbursement Rates Within CONUS



<u>Per Diem Rate</u>	<u>Base</u>	<u>-----</u>	<u>-----</u>	<u>High Cost</u>	<u>-----</u>	<u>-----</u>
<u>Breakfast</u>	<u>\$7.00</u>	<u>\$8.00</u>	<u>\$9.00</u>	<u>\$10.00</u>	<u>\$11.00</u>	<u>\$12.00</u>
<u>Lunch</u>	<u>\$11.00</u>	<u>\$12.00</u>	<u>\$13.00</u>	<u>\$15.00</u>	<u>\$16.00</u>	<u>\$18.00</u>
<u>Dinner</u>	<u>\$18.00</u>	<u>\$21.00</u>	<u>\$24.00</u>	<u>\$26.00</u>	<u>\$29.00</u>	<u>\$31.00</u>
<u>Incidental</u>	<u>\$3.00</u>	<u>\$3.00</u>	<u>\$3.00</u>	<u>\$3.00</u>	<u>\$3.00</u>	<u>\$3.00</u>
<u>Daily Total</u>	<u>\$39.00</u>	<u>\$44.00</u>	<u>\$49.00</u>	<u>\$54.00</u>	<u>\$59.00</u>	<u>\$64.00</u>